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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 56

JOSEPH GARNER AND A. JOSEPH GARNER, TRADING AS CENTRAL STORAGE AND TRANSFER COMPANY, PETITIONERS

v.

TEAMSTERS, CHAUFFEURS AND HELPERS, LOCAL UNION NO. 776 (A. F. L.), ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania (R. 230–238) is reported at 373 Pa. 19, 94 A. 2d 893. The opinion of the trial court, the Court of Common Pleas of Dauphin County, Pennsylvania (R. 169a–202a), is reported at 62 Dauphin County Reporter 339.

JURISDICTION

The petition for a writ of certiorari was granted on June 15, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3).

QUESTION PRESENTED

Whether, at the private suit of an employer, a state court may enjoin, as unlawful under state law regulating labor-management relations, conduct which also violates Section 8 (b) (2) of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, before amendment (49 Stat. 449, 29 U. S. C. 151, *et seq.*), and after amendment (61 Stat. 136, 29 U. S. C. Supp. V, 141, *et seq.*), are set forth in the Appendix, *infra*, pp. 43–54.

STATEMENT

Petitioner is a partnership engaged in the trucking and storage business in Harrisburg, Pennsylvania (R. 171a, 19a–21a). In the main, its operations consist of making local deliveries within the Harrisburg area of goods shipped from outside Harrisburg both by rail and by truck, and of picking up goods locally for delivery to such carriers for transport outside of Harrisburg (*ibid.*). To carry on this business petitioner maintains terminal and platform facilities at the freight station of the Reading Railroad Company

in Harrisburg, where the interchange of shipments to and from petitioner is handled (*ibid.*). Both the Reading Railroad Company and its trucking division, Reading Transportation Company, are under contract with petitioner to use its pickup and delivery services exclusively for their Harrisburg shipments, including freight which originates from or is destined for out-of-state points (R. 172a; 21a–22a).[1] In addition, petitioner makes local deliveries for approximately fifteen trucking lines carrying goods consigned to the Harrisburg area (R. 171a; 22a). Petitioner's volume of business from these sources is from four to five hundred dollars a day (R. 176a; 27a). Under its established administrative standards the National Labor Relations Board exercises jurisdiction in cases brought before it involving businesses whose effect on interstate commerce is like that of petitioner's. See, *e. g.*, *Breeding Transfer Company*, 95 N. L. R. B. 1157; *Teamsters Local Union No. 174*, 90 N. L. R. B. 1851; Six-

[1] The Reading Railway operates on lines principally in New Jersey and Pennsylvania. It connects with many other interstate railroads, including the Baltimore and Ohio, Pennsylvania R. R. Co., New York Central Ry., and Delaware, Lackawanna & Western Ry. Co. In addition, it owns terminal facilities on the Delaware River at Philadelphia through which it handles large volumes of waterborne traffic for and from foreign and coastal ports. These generally available and widely known facts may be verified in Standard and Poor's, *Corporation Records*, Vol. 14 No. 34, p. 1745, and may be noticed judicially by the Court. See *Parker* v. *Brown*, 317 U. S. 341, [illegible].

twenty Annual Report of the National Labor Relations Board, pp. 15–16 (Gov't Print. Off., 1952).

In June, 1950, respondent union undertook "to enroll among [its] membership" the employees of several drayage firms in the Harrisburg area, including petitioner (R. 173a; 23a). Respondent's method of organizing petitioner's employees consisted of placing pickets at petitioner's loading platform at the Reading Railroad's freight terminal who carried signs reading (R. 174a; 21a):

> Local 776 Teamsters Union (A. F. of L.) wants Employees of Central Storage & Transfer Co. to join them to gain union wages, hours and working conditions.

The picketing began on June 7, 1950, and was conducted in a peaceful and orderly manner (R. 174a; 20a). The majority of the truck drivers and other employees of companies for whom petitioner performed pick-up and delivery services refused to cross the picket line, which resulted in a shut-down of about 85 percent of petitioner's operations (R. 176a; 24a–27a). Petitioner complained to respondent that the picketing was "ruining [its] business," but was unsuccessful in persuading respondent to remove the pickets to petitioner's business office "where [its] men come in," and away from the loading platform where its effect was to prevent petitioner from carrying on its business (R. 177a; 25a–26a). Respondent stated to petitioner that the picketing was adopted "to try to sell the men to join the Union * * *

instead of coming around and asking you for the names of each and everyone of your employees and * * * [going] from door to door, which would mean a lot of time and effort * * *" (R. 175a; 25a).

On June 9, 1949, petitioner filed in the Court of Common Pleas for Dauphin County, Pennsylvania, a complaint for injunctive relief against the picketing. The grevamen of the complaint was that the picketing was improper under state law because its purpose was "to coerce [petitioner] to compel or require its employees to become members of or otherwise join [respondent] union" (R. 6a). Following a hearing at which evidence was adduced in support of the allegations of the complaint, a preliminary injunction was granted on June 17, 1953 (R. 102a). The court expressly found, in conformity with the allegations of the complaint, that the picketing was "calculated to coerce the [petitioner] into a violation of law by requiring [it] to force [its] employees * * * to join the [respondent] union" (R. 102a).

Thereafter, further hearings were conducted on petitioner's prayer that the injunction be made permanent. At this stage of the case respondent contended that the state court was without jurisdiction of the proceedings because "[petitioner's] business involves and it is engaged in interstate commerce thereby subjecting the controversy to the exclusive jurisdiction of the National Labor

[illegible] pursuant to the provisions of the [illegible] Relations Act" (R. 170b). The [illegible] that petitioner handled interstate [illegible] that petitioner was "engaged in [illegible] commerce" (R. 181a), nonetheless [illegible], and on March 3, 1952, entered a final decree making the preliminary injunction permanent (R. 208a).

On appeal, the Supreme Court of Pennsylvania reversed and dismissed the complaint for want of jurisdiction (R. 230-239). It held that the gist of petitioner's complaint "was that the [respondent] Union was engaged in an activity which was unlawful under the laws of the State but which also constituted an unfair labor practice under the provisions of the Labor Management Relations Act, * * *" (R. 238). The court noted that Section 8 (b) (3) of the National Act enjoins labor organizations from causing or attempting to cause an employer to discriminate against employees by reason of their union membership or lack of it; that the Pennsylvania Labor Relations Act, like the Federal Act, forbids employers to discriminate against employees by reason of their union membership or lack of it; and that under the local law picketing to force an employer to violate the State Labor Relations Act, although not an unfair labor practice within the meaning of that Act, was nevertheless illegal.[4]

[4]The Pennsylvania Labor Relations Act of June 1, 1937, P. L. 1168, contains a provision similar to Section 8 (b) (3)

"Thus," the court declared, "it will be seen that the Act of Congress prohibits the same activity on the part of a labor organization in this respect as does the Pennsylvania Labor Relations Act, the only difference being that the Federal act would stamp this picketing as an unfair labor practice, whereas the State act does not so list it but our courts have declared it to be unlawful because aimed to coerce the employer into committing what the act does declare to be an unfair labor practice on his part" (R. 232).

In the view of the court below, the question thus presented was "whether [Congress] has manifested a willingness that the States should exercise concurrent jurisdiction in such a case" (R. 233). Answering that question, the court held that "it was the intention of Congress that, if an activity of a labor organization might be held to constitute one of the unfair labor practices enumerated in * * * section 8 (b) of the Labor Management Relations Act, the power to determine that question and the actions that should be taken in the matter were to be vested in a single agency, namely, the National Labor Re-

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of the National Act, insofar as it prohibits, with exceptions immaterial here, employer discrimination against employees with regard to tenure of employment on the basis of their union activities or membership. Unlike the National Act, the Pennsylvania statute contains no provisions which make union conduct of the kind charged in the complaint here an unfair labor practice. Purdon's *Penna. Stat. Ann.*, Tit. 43, § 211.6.

lations Board, in order that thereby a uniform national policy might be developed and enforced" (R. 237).

SUMMARY OF ARGUMENT

On the ultimate facts found by the state courts, the single question presented is whether conduct subject to the jurisdiction of the Board as an unfair labor practice under Section 8 (b) (2) of the National Labor Relations Act may be enjoined by a state court as a violation of state law. It is our position that the Supreme Court of Pennsylvania was correct in ruling that state courts lack such power.

A. By adopting the administrative approach in its attempt to minimize the obstructions to interstate commerce created by industrial strife, Congress "intended to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining." S. Rep. No. 573, 74th Cong., 1st Sess., p. 15, quoted by this Court in *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 267. To this end Congress created the Board to vindicate the public rights conferred by the Act, and granted it comprehensive power to remedy activities defined in the Act as unfair labor practices. As shown by the terms of the Act, its history, and the administrative procedures

it established, this power was made exclusive of any concurrent jurisdiction in any other tribunal to regulate the conduct with which it dealt.

The terms and framework of the original Act, which thus foreclosed the assertion of jurisdiction by state courts to regulate unfair labor practice conduct, were not materially altered by the 1947 amendments. In one change the Board's General Counsel was authorized, in specified instances, to seek temporary relief in federal district courts against the commission of unfair labor practices pending hearing before the Board. This change, however, was designed simply to make the existing structure more effective, and not to make a departure from the established rule that unfair labor practices were to be remedied solely in accordance with the Act's procedures.

In a further change, the amendments omitted the term "exclusive" in describing the Board's jurisdiction to prevent unfair labor practices. Section 10 (a) of the Act. Here also, however, there was no intent to permit concurrent enforcement by state courts of local law with respect to practices proscribed by the Federal Act. The deletion of "exclusive" was thought to be logically required by the new sections "authorizing temporary injunctions enjoining alleged unfair labor practices" at the suit of the Board in federal district courts pending Board adjudication, and by the "provisions making unions suable" for money damages for violations of Section 8 (b) (4). H.

Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 52. It was for this reason alone that the word "exclusive" was deleted. Thus the 1947 amendments left unchanged the Act's underlying thesis that the uniform and specialised regulation for which it provided was not to be interfered with by concurrent regulation of the same conduct by the states.

The litigation in the present case strikingly illustrates how the Congressional scheme is undermined by such concurrent regulation. For in obtaining an injunction against the unfair labor practice activities involved here, petitioner invoked, at every step of the proceedings, procedures diametrically opposed to those provided in the Act, and obtained rulings at variance with those which might have been elicited from the Board.

The correctness of the conclusion that the Act precludes states from granting relief against unfair labor practice conduct has been decisively confirmed, we believe, by the decision of this Court in *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, 338 U. S. 953. There the Court reversed without opinion the decision of the Wisconsin Supreme Court which had upheld the right of an agency of that State to remedy as a violation of state law the discharge of an employee which also constituted an unfair labor practice under the Act. This decision is

fully consistent with both prior and subsequent cases in this Court.

B. Petitioner's contention that while the Act may preclude state administrative agencies from infringing upon the Board's unfair labor practice jurisdiction, it has no such impact upon the jurisdiction of state courts in the same field so long as they are enforcing private rights, is wholly without merit. Manifestly, the "real potentials of conflict" (*La Crosse Telephone Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18, 26) which Congress meant to avoid are the same whether a state regulates alleged unfair labor practice conduct through its courts in private lawsuits or through its administrative agencies. Petitioner can derive no support for the distinction it attempts to make from the language of Section 10 (a), which confers jurisdiction on the Board to remedy unfair labor practices. In stating that the Board's power "shall not be affected by any other means of adjustment," that Section follows the wording of the original Act which was designed to make the Board's power paramount in the field of unfair labor practice activities. Similarly, the proviso to Section 10 (a) permitting the Board to cede its jurisdiction by agreement in specified instances to an "agency of any State" furnishes no basis for an inference that state courts possess such jurisdiction without cession. Rather, the proviso clearly indicates that

with respect to conduct which the Board is authorized to remedy, no concurrent jurisdiction exists in the states except in strict conformity with the terms of the proviso.

ARGUMENT

The National Labor Relations Act is exclusive in the field it governs, precluding concurrent state regulation of the same conduct.

The gravamen of petitioner's complaint, as stated by the court below (R. 238) and acknowledged by petitioner (Br. 15), "was that the defendant Union was engaged in an activity which was unlawful under the law of the State but which also constituted an unfair labor practice under * * * [Section 8 (b) (2)] of the Labor Management Relations Act * * *." The trial court found as a fact (R. 179a) that the Union conduct in question was "deliberately designed to coerce [petitioner], by causing it substantial business losses, to compel or require its employees to become members of the Union." This finding, undisturbed by the court below, precisely states the unfair labor practice denounced by Section 8 (b) (2) of the National Act.[1]

[1] Section 8 (b) (2) reads in pertinent part: "It shall be an unfair labor practice for a labor organization or its agents * * * to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) * * *." Subsection (a) (3), with qualifications immaterial here, makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of

Accordingly, while the Board itself might or might not have made the same ultimate fact finding on the record in this case, the question is presented whether a state court may enjoin as a violation of state law conduct proscribed by the National Labor Relations Act. Addressing ourselves to that question, we submit that the decision of the Supreme Court of Pennsylvania is correct.

In *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, 338 U. S. 953, this Court held that a state regulatory agency acting under authority of local law was powerless to regulate conduct which the National Labor Relations Act also proscribed as an unfair labor practice. The basis of the decision, as subsequently explained by this Court, was that "states may not regulate in respect to rights guaranteed by Congress in Section 7" of the Federal Act. *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 391. The same basic considerations which barred the state from acting in that case serve to preclude state action in this case.

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employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *". It is clear that a union which, like the one here, has no valid union-security agreement with the employer, violates Section 8 (b) (2) when it causes or attempts to cause the employer to make union membership a condition of employment. See, *e. g.*, *Denver Building and Construction Trades Council*, 90 N. L. R. B. 1768, enforced, 192 F. 2d 577 (C. A. 10); *Medford Building and Construction Trades Council*, 96 N. L. R. B. 165.

A. The terms and structure of the Act demonstrate a purpose to achieve uniform, specialized, and exclusive regulation of the field of conduct it governs

1. In the familiar administrative pattern which Congress has traditionally followed in enacting regulatory legislation to meet national problems, the National Labor Relations Act created the Board as a public agency entrusted with exclusive authority to enforce its provisions. To assure against subversion of the uniformity and specialization of its regulation, Congress made it clear that the Act "is paramount over other laws that might touch upon similar subject matters," and that its provisions were "intended to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining." S. Rep. No. 573, 74th Cong., 1st Sess., p. 15, quoted by this Court in *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 267. See also H. Rep. No. 1147, 74th Cong., 1st Sess., p. 23. The entire procedural framework of the Act was molded to implement this purpose, and thereby to prevent an evolution of patchwork regulation with respect to a national problem which had created "substantial obstructions to the free flow of commerce." Section 1 of the Act. See *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 122–124. To the extent that it bears on the issue

presented here, this framework and the purpose it implements have not been materially altered by the 1947 amendments.

Thus, as it did originally, the amended Act seeks to eliminate disruptions to commerce in the field of labor relations by empowering the Board "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce." Section 10 (a). To carry out this function, Congress created the Board as an agency of the United States. Section 3 (a). The method provided for enabling a private party to obtain redress against unfair labor practices is still the filing with the Board of a charge, which "sets in motion the machinery of an inquiry." *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U. S. 9, 18. The substantially unaltered procedural scheme remains designed to establish "a public agency acting in the public interest, not any private person or group, * * * as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce" (*Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 264, 265).

Strengthening the Board's procedural arsenal, the amended Act enables the Board to obtain interlocutory relief against the commission of unfair labor practices (*National Labor Relations Board* v. *Denver Building and Construction*

Trades Council, 341 U. S. 675, 681–683) by applying to an appropriate federal district court, during the pendency of proceedings before the Board, for a temporary injunction. Section 10 (j) and (l). With respect to the unfair labor practices defined by Section 8 (b) (4) (A), (B), and (C), should the "officer or regional attorney" investigating the charge have "reasonable cause to believe such charge is true and that a complaint should issue," it is mandatory for him to petition a federal district court "for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter." Section 10 (l). The same procedure is applicable to unfair labor practices charged under Section 8 (b) (4) (D) except that application for temporary injunctive relief is not mandatory. Section 10 (l). With respect to all other unfair labor practices, after the issuance of a complaint, the Board may in its discretion seek interlocutory relief. Section 10 (j).

It is obvious, of course, that the provision for interlocutory injunctions to be sought *by the Board* affords no basis for a state court to grant injunctive relief at the suit of a private party for unfair labor practice conduct violative of state law as well as of the National Act. That this amendment presupposed the retention by the Board of sole authority to obtain injunctions in such cases is conclusively shown in the report of

the Senate Committee, which explains its purpose as follows (S. Rep. No. 105, 80th Cong., 1st Sess., p. 8):

> Time is usually of the essence in these matters, and consequently the relatively slow procedure of Board hearing and order, followed many months later by an enforcing decree of the circuit court of appeals, falls short of achieving the desired objectives—the prompt elimination of the obstructions to the free flow of commerce and encouragement of the practice and procedure of free and private collective bargaining. Hence we have provided that *the Board, acting in the public interest and not in vindication of purely private rights,* may seek injunctive relief in the case of all types of unfair labor practices and that it shall also seek such relief in the case of strikes and boycotts defined as unfair labor practices. [Emphasis added.] *

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* When the 1947 amendments were under consideration by Congress, it was proposed that private persons should be permitted to have recourse to the Federal district courts for injunctive relief against violations of Section 8 (b) (4) of the amended Act. S. Rep. No. 105, 80th Cong., 1st Sess., pp. 54–56; 93 Cong. Rec. 4834–4838. After much discussion the proposal was rejected. 93 Cong. Rec. 4847. The discussion is illuminating because both the supporters and adversaries of the proposal recognized the Board's exclusive jurisdiction under the Act as it stood to deal with unfair labor practices proscribed by the statute. S. Rep. No. 105, p. 54; 93 Cong. Rec. 4839, 4841, 4843. Petitioner's reference to the colloquy between Senators McClellan and Ball during the debate on this proposal, which is claimed to reveal a "recognition of continuing state court jurisdic-

In a further change, upon which petitioner relies to establish the state power disclaimed by the Pennsylvania Supreme Court (Br. 48 *et seq.*), the 1947 amendments deleted the word "exclusive" from Section 10 (a) of the Act, which empowers the Board to prevent unfair labor practices. Section 10 (a), before the amendments, read, "This power [to prevent any person from engaging in any unfair labor practice] shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise." The 1947 amendments eliminated the phrase "shall be exclusive."

It is clear, however, that Congress, by the mere elimination of the word "exclusive," while retaining and strengthening the Act's unified scheme of administrative enforcement, did not intend to permit private parties to undermine that scheme by resort to state courts on the theory that they were enforcing local law. There was a specific and plainly defined reason for dropping the word "exclusive"—a reason which affords no basis for petitioner's position in this case. The change was designed simply to accommodate the new provisions enacted in 1947 which allowed for

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tion under state law" in the field of secondary boycotts (Br. p. 34), can hardly be said to indicate the contrary. For the statements referred to related to the availability of state remedies *before* the 1947 amendments made certain secondary boycotts unfair labor practices subject to the Board's jurisdiction.

judicial consideration of unfair labor practices in specified instances. Thus, as the House conferees explained, because of the new sections "authorizing temporary injunctions enjoining alleged unfair labor practices" at the suit of the Board in a federal district court pending proceedings before the Board (see Sections 10 (j) and (l), and *supra*, pp. 15-17), and because of "provisions making unions suable" for money damages for violations of Section 8 (b) (4) (Section 303), it was thought no longer appropriate to describe the Board's power as wholly exclusive. H. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 52.' It was for this reason alone that the word "exclusive" was deleted. The omission of this single word, a slight change fully explained by the legislative history, was obviously not intended by Congress

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'The conferees added that "the conference agreement makes clear that, where two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies." Contrary to the elaborate meaning petitioner ascribes to this language (Br. pp. 27, 58-59), in its context the "other remedies" alluded to plainly relate to relief provided in Sections 10 (j) and (l), and 303, and not to the kind of state court remedy sought by petitioner—a wholly different remedy which is in no way dealt with in this passage from the legislative history of the amendments. *Cf., Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F. 2d 183, 187 (C. A. 4). This becomes even more apparent when it is considered that the specific remedies added by Sections 10 (j), (l), and 303 are the only occasions mentioned either in the Act or by the conferees where "two remedies exist [for unfair labor practice conduct], one before the Board and one before the courts * * *."

to effect a drastic innovation in the scheme for remedying unfair labor practice conduct. *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F. 2d 183, 187 (C. A. 4); *Gerry* v. *Superior Court*, 32 Cal. 2d 119, 127, 128, 194 P. 2d 689, 694, 695; *McNish* v. *American Brass Co.*, 139 Conn. 34, 89 A. 2d 566; *Bors* v. *Cease*, 101 F. Supp. 473, 477 (D. Alaska). See also, *Capital Service, Inc.* v. *National Labor Relations Board*, 204 F. 2d 848 (C. A. 9).

In sum, it is evident that in the amended Act, as in the original, "Congress has worked out elaborate administrative machinery for dealing with the whole field of labor relationships, a matter requiring specialized skill and experience, and has provided for the handling of unfair labor practices by an administrative agency equipped for the task." *Amazon Cotton Mill Co.* v. *Textile Workers Union*, *supra*, at 187. As in *Texas and Pacific Railway Company* v. *Abilene Cotton Oil Company*, 204 U. S. 426, the structure, subject, history, and purpose of the Act involved here converge to require that the statutory scheme be held exclusive in the field it regulates. In *Texas and Pacific*, the initial exclusive jurisdiction of the Interstate Commerce Commission was implied, although not in terms prescribed, because of the "indissoluble unity" of the statutory scheme, the need for a "uniform standard," the

conferment of "administrative power" upon the Commission, and "because, if the power existed in both courts and the Commission to originally hear complaints * * *, there might be a divergence between the action of the Commission and the decision of a court * * * which would render the enforcement of the act impossible." 204 U. S. at 440–441. Here, as there, "the act cannot be held to destroy itself." *Id.* at 446.

2. Ample illustrations of the manner in which the position urged upon the Court by petitioner would effectively destroy the "uniformity of administrative policy and disposition, expertness of judgment, and finality in determination" (*Aircraft & Diesel Corp.* v. *Hirsch*, 331 U. S. 752, 767–768), which are the ends sought by Congress in the Act, are available in the factual circumstances of the case at bar. To relieve its business of the picketing carried on at its loading platform, petitioner sought and obtained in a private lawsuit injunctive relief from the Pennsylvania trial court. The points of conflict of this action with the scheme envisioned by Congress for preventing picketing that constitutes an unfair labor practice are many. At the outset, the Act permits no private right of action. Application must be made by the filing of a charge with the General Counsel of the Board who has discretionary authority to determine whether to proceed with the

case.[6] And in the administrative process followed under the Act, the General Counsel's office will, before proceeding to complaint, utilize its experience to effect an informal adjustment of the case, consistent with the public policies contained in the Act. Such informal procedures, which customarily close nearly 90 percent of all unfair labor practice cases brought to the Board,[7] were of course never invoked in this case.

If efforts to achieve an informal settlement fail and a complaint is issued alleging an unfair labor practice, Congress provided that the case should be prosecuted by the General Counsel of the Board acting in the public interest, and heard by the administrative agency charged with the responsibility of vindicating public rights (*Nathanson* v. *National Labor Relations Board*, 344 U. S. 25, 27), not handled by a contestant in the case, here the employer, and brought before a state court in the form of a private lawsuit. And, in contrast to petitioner's action in obtaining a preliminary injunction from a state court, Congress provided that the General Counsel may obtain temporary injunctive relief in the federal district courts pending determination of a case

[6] See e. g., *General Drivers* v. *National Labor Relations Board*, 179 F. 2d 492 (C. A. 10); *Lincourt* v. *National Labor Relations Board*, 170 F. 2d 306 (C. A. 1); *Haleston Drug Stores* v. *National Labor Relations Board*, 187 F. 2d 418, 422 (C. A. 9), certiorari denied, 342 U. S. 815.

[7] See Seventeenth Annual Report of the Board, p. 286 (Gov't. Print. Off., 1953).

like this one if, in the exercise of his discretion, he thinks it appropriate (*supra*, p. 16).

Beyond the disparities between the procedures Congress intended to be applied to cases involving unfair labor practices and those utilized by petitioner in this case, the state court's factual determinations and choice of remedy further illustrate the breakdown of uniform administration of labor policy which inevitably results from concurrent regulation of identical conduct. Thus, the Board, if the case had been before it, might have drawn different inferences than the trial court. If petitioner were right in its position, Congress would have intended that there might be as many independent conclusions with respect to evidence concerning unfair labor practices as there are localities which may consider such conduct to be violative of their own law. But such an intent cannot be squared with the purpose of the administrative scheme adopted by Congress to deal with cases like this one.

Finally, it is to be observed that the injunction granted by the trial court enjoined respondent from all picketing at petitioner's loading platform, without respect to its purpose. Under the Act, any injunctive relief would have been restricted to the unfair labor practice involved, or any related violation. *National Labor Relations Board* v. *Express Publishing Company*, 312 U. S. 426. In addition, the state court remedy here

made no provision for the posting of notices, which the Board customarily orders as a means of effectuating the public policies of the Act. Seventeenth Annual Report of the Board, p. 208 (Gov't. Print. Off. 1953).

Thus at each step of this case, petitioner invoked procedures different from those provided for in the Act, and obtained rulings at variance with those which might have been elicited from the Board. Clearly, there can be no uniformity of regulation, no specialization and expertness of administration, and no guarantee that public rights rather than private interests will be the basis of decision, if private parties may have recourse to local tribunals for relief against the very conduct which Congress has prohibited. As the Court of Appeals for the Fourth Circuit has pointed out in the analogous case involving an effort by a private party to enforce the National Labor Relations Act in a federal district court (*Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F. 2d 183, 190):

> More than two hundred local tribunals of general jurisdiction would be clothed with the special jurisdiction now vested in a unified agency with nationwide jurisdiction over labor controversies; and it is not difficult to foresee the confusion that would necessarily result. Certainly the statute should not be given an interpretation which would lead to such consequences.

The mischief warned against by the Fourth Circuit with respect to an overlapping of federal court jurisdiction in the field of unfair labor practices would of course be infinitely multiplied if a similar jurisdiction were extended to state courts as well.

3. In reading the terms, structure, and history of the Act to preclude concurrent state regulation of unfair labor practices, the court below was doing no more than following the construction this Court has given the Act in decisions which have delineated the respective areas for state and federal regulation of the employment relationship. Decisive upon the issue in this case is *Plankinton Packing Company* v. *Wisconsin Employment Relations Board*, 338 U. S. 953. There the Wisconsin Employment Relations Board entertained proceedings initiated by an employee claiming to have been discharged for nonmembership in a labor organization in violation of the Wisconsin Employment Peace Act. 255 Wis. 285, 38 N. W. 2d 688. Because the employer involved was engaged in a business which affected interstate commerce, and the alleged discharge was not protected by a lawful union-security contract, the complaint, as in this case, also stated an unfair labor practice under the National Labor Relations Act. Nonetheless, the state tribunal heard the case, upheld the complainant's position, and ordered that the discharged employee be rein-

stated with back pay. This Court reversed without opinion. 338 U. S. 953.

Thereafter, in *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, the Court explained the basis of its decision in *Plankinton*. The Court noted that Section 7 of the National Labor Relations Act guarantees employees the right not to join unions in the circumstances of the *Plankinton* case, and that in the unfair labor practice provisions of that Act, "the N. L. R. B. was given jurisdiction to enforce the rights of the employees." Accordingly, "it was clear that the Federal Act had occupied this field to the exclusion of state regulation." The Court added that "*Plankinton* * * * show[s] that states may not regulate in respect to rights guaranteed by Congress in Section 7." 340 U. S. at 390, n. 12. The manner in which the trial court in the instant case attempted to "regulate in respect to rights guaranteed by Congress in Section 7" is no different from the action of the Wisconsin Board in *Plankinton*. In both cases the effort was to remedy under state law a violation of rights established in the National Act which were intended to be vindicated through unfair labor practice proceedings before the Board. The effort can no more succeed here than in *Plankinton*.

The principle that the Act's regulatory provisions are not to be overlapped by the enforcement of state law had been established in the field of

representation proceedings before the *Plankinton* case arose. In *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767, and *LaCrosse Telephone Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18, both of which were cited by this Court in its *Plankinton* decision, the authority of the Board to determine representation questions was established as exclusive, even where the standards applied by the states were parallel with those in the Act. The confusion and disruption to national policy that would follow from a contrary view was described in the *Bethlehem* case as follows (330 U. S. at 775–776):

> Thus, if both laws are upheld, two administrative bodies are asserting a discretionary control over the same subject matter, conducting hearings, supervising elections and determining appropriate units for bargaining in the same plant. They might come out with the same determination, or they might come out with conflicting ones as they have in the past. * * * But the power to decide a matter can hardly be made dependent on the way it is decided. As said by Mr. Justice Holmes for the Court, "when Congress has taken the particular subject matter in hand coincidence is as ineffective as opposition. * * *" *Charleston R. Co.* v. *Varnville Co.*, 237 U. S. 597, 604. See also *Southern Railway Co.* v. *Railroad Commission of Indiana*, 236 U. S. 439, 448; *Missouri Pacific R. R.* v.

> *Porter*, 273 U. S. 341, 345–6. If the two boards attempt to exercise a concurrent jurisdiction to decide the appropriate unit of representation, action by one necessarily denies the discretion of the other. The second to act either must follow the first, which would make its action useless and vain, or depart from it, which would produce a mischievous conflict.

As we have shown (*supra*, pp. 21–25), these observations are equally applicable to the present case, involving an unfair labor practice. And we believe that the correctness of applying them to unfair labor practice cases has been fully established by the decision of this Court in *Plankinton*, which cited as the sole supporting authority the *Bethlehem* and *LaCrosse* cases.

Subsequent decisions of this Court dealing with state regulation of the employment relationship confirm our conclusion. Thus, state regulation has been permitted only where, unlike here, "Congress has not made such * * * conduct * * * subject to regulation by the federal Board [and therefore] there is no existing or possible conflict or overlapping between the authority of the Federal and State Boards, because the Federal Board has no authority either to investigate, approve or forbid the union conduct in question." *United Automobile Workers* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, 254. Compare *Algoma Plywood Co.* v. *Wisconsin Employment*

Relations Board, 336 U. S. 301. On the other hand, where states have sought to regulate the right to strike, which is regulated by the National Act, this Court has sustained the exclusive and paramount authority of the Board to deal with the matter. *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383; *United Automobile Workers* v. *O'Brien*, 339 U. S. 454. "Congress has not been silent on the subject of strikes in interstate commerce. * * * Congress occupied this field and closed it to state regulation" (citing, *inter alia*, the *Plankinton* case. *United Automobile Workers* v. *O'Brien*, *supra*, at 456, 457). Similarly, Congress has not been silent with respect to union coercion of employers to make membership a condition of employment, and, except to the extent permitted by Section 14 (b) of the Act (see, *infra*, pp. 41–42, n. 13), has closed this field to state regulation. In short, the conclusion of the court below, that the Act's "provision for a comprehensive remedy [for the union practices charged in this case] precluded any State action by way of a different or additional remedy for the correction of the identical grievance" (R. 236), is decisively supported by the decisions of this Court.[4]

[4] In addition to the authority discussed above, many state and federal courts have agreed with the results reached in this case by the Pennsylvania Supreme Court. See, *e. g.*, *Capital Service, Inc.* v. *National Labor Relations Board*, 204 F. 2d 848 (C. A. 9); *Textile Workers Union* v. *Aristo Mills Co.*, 193 F. 2d 529, 533 (C. A. 4); *Norris Grain Co.* v.

B. The exclusive authority of the Board to regulate unfair labor practices permits of no exception for concurrent state regulation under the guise of adjudicating private rights.

Conceding (Br. 72) that the states may not assert jurisdiction to remedy violations of the

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Nordaas, 232 Minn. 91, 46 N. W. 2d 94; *Costaro* v. *Simons*, 302 N. Y. 318, 98 N. E. 2d 454; *Ryan* v. *Simons*, 277 App. Div. 1000, 100 N. Y. Supp. 2d 78, affirmed, 302 N. Y. 742, 98 N. E. 2d 707, certiorari denied, 342 U. S. 897; *McNish* v. *American Brass Co.*, 139 Conn. 34, 89 A. 2d 566; *Robinson Freight Lines* v. *Teamsters Union*, 28 LRRM 2453 (Ct. of App., Tenn., July 18, 1951); *Reed Construction Co.* v. *Building Council*, 27 LRRM 2161 (Chan. Ct. Miss., February 22, 1950). Similarly, the principle applied by the court below, that the Board has exclusive authority to deal with conduct constituting unfair labor practices, has been upheld by the vast majority of state and federal courts in the analogous situation where a private party seeks to enforce the unfair labor practice provisions of the Act in a forum other than the Board. See, *e. g.*, *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F. 2d 183 (C. A. 4); *Schatte* v. *Theatrical Stage Employees*, 182 F. 2d 158, 165–166 (C. A. 9), certiorari denied, 340 U. S. 827; *California Association* v. *Building and Const. Trades Council*, 178 F. 2d 175 (C. A. 9); *Ex parte De Silva*, 33 Cal. 2d 76, 199 P. 2d 6; *Lodge Mfg. Co.* v. *Gilbert*, 32 LRRM 2500 (Tenn. Sup. Ct., July 17, 1953); *Jacobs* v. *Clearing Machine Corp.*, 31 LRRM 2071 (Ohio Ct. App., July 24, 1952); *McNutt* v. *United Gas, Coke & Chemical Workers*, 108 F. Supp. 871 (W. D. Ark.); *I. L. U.* v. *Sunset Line & Twine Co.*, 77 F. Supp. 119 (N. D. Cal.); *United Packing House Workers* v. *Wilson & Co.*, 80 F. Supp. 563 (N. D. Ill.); *Born* v. *Cease*, 101 F. Supp. 473 (D. Alaska); *Nash Kelvinator Corp.* v. *Grand Rapids Building Trades Council*, 30 LRRM 2468 (W. D. Michigan, July 2, 1952). *Contra: Montgomery Building and Construction Trades Council* v. *Ledbetter Erection Company*, 256 Ala. 678, 57 So. 2d 112, 121, writ of certiorari dismissed as improvidently granted, 344 U. S. 178; *Kinard Co.* v. *Building Trades Council*, 64 So. 2d 400 (Ala.); *State ex rel. Tidewater-Shaver Barge Lines* v. *Dobson*, 245 P. 2d 903 (Oregon Sup. Ct.).

public rights conferred by the Act, petitioner nevertheless insists that state courts may enjoin, as violations of state-recognized private rights, the precise conduct which has been proscribed by the Act. The Act, petitioner argues (Br. 73), grants the Board power only "to protect new public rights and not to adjudicate private rights," the determination of which was left to "the continuing authority of state courts to adjudicate private rights under state law." Accordingly, petitioner concludes that the vesting of power in the Board to enforce the provisions of the Act was intended at most to prevent other public administrative bodies from exerting an infringing jurisdiction, but did not deprive state courts of their traditional function of adjudicating private causes of action under state law even though they also constituted unfair labor practices. To fortify its position petitioner refers to Section 10 (a) of the Act, by which the Board is "empowered" to prevent persons from engaging in unfair labor practices, and which further provides that while this power is not affected by "any other means of adjustment or prevention," it may nevertheless be ceded, in specified circumstances, to "any agency of any State." According to petitioner, the word "empowered" signifies a discretionary authority "limited * * * to [the] protection of public rights" (Br. 40); the phrase "any other means of adjustment" constitutes a

recognition of the existence "of other remedies" for unfair labor practice activities, such as the one sought by petitioner in this case (Br. 26 ff.); and the provision for cession of the Board's jurisdiction to state "agencies" indicates an intent not "to affect continuing state court jurisdiction under state law" (Br. 41). In this view, cases like *Bethlehem*, *LaCrosse* and *Plankinton* (*supra*, pp. 25–27) are distinguishable, for they involved attempts by state administrative agencies, rather than state courts, to regulate in the field covered by the Act.

This argument, we think, misreads the controlling decisions of this Court and runs squarely counter to the language and intent of Section 10 (a) upon which petitioner attempts to rely.

This Court has found no distinction which is relevant to the problem at hand between the adjudication by state courts of "private rights" and the enforcement of state statutes by administrative agencies. So, for example, in *United Automobile Workers* v. *O'Brien*, 339 U. S. 454, a state statute, enforceable through sanctions administered in the state courts (339 U. S. at 456), was held to encroach upon the Federal Act's regulation of peaceful strikes. As the Court subsequently observed, "*Plankinton* [which involved a state administrative agency] and *O'Brien* [which involved a state court] both show that states may not regulate in respect to rights guar-

ented by Congress in Section 7." *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 390, n. 12.[9] The decisive point, in a word, is, as we have shown (*supra*, pp. 14–25), that Congress intended the regulatory scheme of the Act to be exclusive. State regulation in the same area is inconsistent with the congressional objective whether it is the action of courts adjudicating "private rights" or of administrative bodies dealing with "public rights."[10] The interest of the states in private litigation in their courts is no greater in this respect than their manifest interest in regulating local public utilities. *Cf. Amalgamated Association* v. *Wisconsin Employment Relations Board*, *supra*, at 391. And state action in the preempted area is equally forbidden, whichever form it takes.

The critical evils of overlapping and inconsistency with the uniform scheme Congress created are no less present when the state regulates conduct amounting to federal unfair labor practices in its courts than when the state acts through administrative agencies. As we have shown (*supra*, pp. 21–24), this very case illustrates the deviations of state action from the pattern of

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[9] *Cf. Hughes* v. *Superior Court of California*, 339 U. S. 460, 466: "The fact that [the state's] policy is expressed by the judicial organ of the State rather than by the legislature we have repeatedly ruled to be immaterial."

[10] See Jaffe, *The Public Right Dogma*, 59 Harv. L. Rev. 720, 737–738, and 728.

procedural and substantive law by which Congress intended to govern conduct of the type involved here. Further illustrating the disruptive consequences properly avoided by the decision below, it may be observed that under petitioner's view the present controversy might well have been brought before the Board through the filing of an unfair labor practice charge, even after the trial court had issued its injunction. *Cf. H. N. Thayer Co.*, 93 N. L. R. B. 1127, 1128-1130. If petitioner is correct, any inconsistency that might have occurred thereafter in the separate dispositions of the Board and the state court could not be cause for objection by the parties, since each tribunal would be operating in its proper and respective sphere of public and private rights. As a scarcely less incongruous alternative, petitioner's thesis would give persons considering themselves aggrieved by unfair labor practice conduct the option of avoiding Board adjudication of their cases in favor of litigation before state courts whenever this course seemed advantageous." Clearly, the "real potentials of conflict" (*LaCrosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U. S. 18, 26), are the same in either case. And because the integrity of the regulatory procedures estab-

[11] The Board may assert its jurisdiction in unfair labor practice cases only where a party initiates the proceedings by filing a charge. *National Labor Relations Board v. Indiana & Michigan Electric Co.*, 318 U. S. 9, 17.

tained by Congress is susceptible to subversion by such conflicts regardless of their source, it is clear that Congress left no room for deterioration of the uniformity and specialization of administration it intended under the guise of an adjudication of private rights by state courts.

We think, contrary to petitioner, that this is the plain meaning of Section 10 (a), which is the critical provision in the coordinated framework of the Act establishing the Board as the sole tribunal with power to hear and determine unfair labor practice conduct. The Section reads as follows:

> SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with

> the corresponding provision of this Act or has received a construction inconsistent therewith.

There is nothing in this language, or in the Act as a whole, to sustain petitioner's claim that by use of the word "empowered," giving the Board authority over "public" rights, Congress left the states free to regulate the same conduct as a means of enforcing "private" rights. When it appears, as it does here, that litigation of private rights overlaps the Board's authority under Section 10 (a) to hear and decide unfair labor practice cases, the impropriety of such litigation has been established. In empowering the Board to prevent unfair labor practices and thereby vindicate the public rights conferred in the Act, Congress vested the Board with authority both to hear unfair labor practice cases and to provide appropriate remedies, which is precisely the same power the Pennsylvania trial court assumed for itself in this case. But under Section 10 (a), as stated in the report accompanying the House bill (H. Rep. No. 245, 80th Cong., 1st Sess., p. 40):

> * * * the power of the Board under the amended act in the matter of unfair labor practices is exclusive * * *. The rule of exclusive jurisdiction was developed many years ago by the Supreme Court in order to provide for uniformity in matters of national policy under the commerce clause. The Labor Act is an illustration of such a policy.

As we have shown, *supra*, pp. 14–21, this statement, made with respect to the House version of Section 10 (a), is an accurate description of Section 10 (a) as enacted.

Further support for the decision below is found in the language of Section 10 (a), mistakenly invoked by petitioner (Br. 26 *et seq.*), which secures the Board's jurisdiction against impairment "by any other means of adjustment or prevention * * *." Far from recognizing a concurrent authority in state courts which would subvert the administrative framework of the Act, Congress, by this language, simply adopted the existing wording of the original Act, which emphasized that the provisions of the Act were "paramount over other laws that might touch upon similar subject matters." S. Rep. No. 573, 74th Cong., 1st Sess., p. 15. See also S. Comm. Print, Comparison of S. 2926 (73d Cong.) and S. 1958 (74th Cong.), reprinted in Vol. 1 of Legislative History of National Labor Relations Act, 1935, p. 1319, at 1323, 1357 (Gov't. Pr: Off. 1949).

The passages from the House Conference Report upon which petitioner relies in this connection are of no help to the petitioner. The report stated, as petitioner's quotation shows (Br. 26–27), that "when two remedies exist, one before the Board and one before the Courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies." But petitioner omits the earlier language in the same

paragraph which indicates that the situations described are those provided for in other sections of the Act and have no reference to the existence of state court remedies for unfair labor practice conduct. See p. 19, n. 5, *supra*. Moreover, the final two sentences of the quotation appearing in petitioner's brief, referring to "the availability to private persons of any other remedies," are not even contained in the paragraph of the report dealing with Section 10 (a). These sentences are found rather in the part of the report dealing with the separate procedural provisions of Section 10 (l) empowering the Board, pending its own proceedings, to seek injunctive relief in an appropriate federal district court against the unfair labor practices defined in Section 8 (b) (4). In this context the reference to other remedies for private persons plainly relates to the private suits for damages specifically provided for by Section 303 of the Labor Management Relations Act for the same conduct as that proscribed by Section 8 (b) (4).

Equally unavailing to petitioner are the references it makes to passages in the legislative debates which speak of instances where the Act "may be duplicating the remedy existing under State law" (Br. 29, quoting Senator Taft in 93 Cong. Rec. 4437, and Br. 28–29, 31–32, 34). For, as is made perfectly clear by the contexts from which petitioner has abstracted these truncated quotations (see 93 Cong. Rec. 4024–4025, 4432–

4433, 4436–4437), they refer merely to the applicability of Section 8 (b) (1) (A) to situations where there is physical violence." Congress, as this legislative history demonstrates, purposely reserved to local authorities the right to deal with violence, whether it occurs on a picket line or entirely outside the field of labor relations. See *National Labor Relations Board* v. *International Rice Milling Co.*, 341 U. S. 665, 672; Cox and Seidman, *Federalism and Labor Relations*, 64 Harv. L. Rev. 211, 236. The question presented in this case is, of course, wholly different.

We note, finally, petitioner's effort (Br. 59–60) to build an argument upon the provision in Section 10 (a) which empowers the Board to make an agreement with a state "agency" ceding jurisdiction to the latter "unless the provision of the State * * * statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith." The suggestion is that the jurisdiction of which cession is permitted was by this provision somehow "distinguished from the jurisdiction of state courts where there was no thought of any

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[12] As Senator Taft stated during the colloquy with Senator Morse from which petitioner has partially quoted, "[Section 8 (b) (1) (A)] will duplicate some of the State laws *only to the extent*, as I see it, *that actual violence is involved* in the threat or in the operation." 93 Cong. Rec. 4437. [Emphasis supplied.]

cession in connection with their then unquestioned continuing jurisdiction under state law" (Pet. Br. 59–60). But the absence of a provision for ceding jurisdiction specifically to state courts can hardly be the basis for an inference that state courts have such jurisdiction without cession. On the contrary, the very location of the proviso allowing cession as an addendum to the Board's powers bolsters the conclusion that except for the proviso and in conformity with it, no other tribunal may operate in the field occupied by the Board. That this is so with respect to conduct which, as here, violates both local law and the National Act, is reflected by this Court's observation in *Algoma Plywood Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301, 313, that a cession of jurisdiction was necessary to permit state action "where State and federal laws have parallel provisions."

Significantly, the terms under which cession may take place emphasize the concern of Congress with maintaining uniformity in administration. Cession to a state agency is conditioned, not only upon substantial identity in the provisions of the parallel statute, but also upon substantial continuing identity in their interpretation. But if, as in this case, a state court undertakes to redress unfair-labor-practice conduct as violative of state law, there can be no assurance that the uniformity of administration in this field upon which Section 10 (a) insists will be maintained.

We submit, in short, that far from supporting petitioner's position, the proviso for cession of jurisdiction points, as do all other pertinent materials, to the conclusion that the Supreme Court of Pennsylvania was right. The paramount authority of the Board to consider and remedy the violation of Section 8 (b) (2) alleged by petitioner precludes injunctive relief in the state court, under state law, directed against the same conduct.[13]

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[13] The decision below is not affected by Section 14 (b) of the Act, which provides that nothing in the Act "shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." The section is not invoked by petitioner, and we mention it here solely to complete our canvass of matters which might conceivably be invoked on petitioner's behalf. The evident reason for the irrelevance of Section 14 (b) is that it permits the operation of state regulatory authority only with respect to union-security agreements, and no such agreement is involved here. Without such an agreement, the requirement of union membership as a condition of employment is, of course, prohibited by the National Act, and there is no need for invocation of state prohibitory laws. Accordingly, this case presents no occasion in any event for the operation of Section 14 (b), for that provision was intended simply to leave the States "free to pursue their own *more restrictive* policies in the matter of union-security agreements" and thereby to regulate a matter "not governed by the federal law * * *." *Algoma Plywood Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301, 314. [Emphasis supplied.] The legislative history of Section 14 (b) confirms the conclusion that it was intended to permit state restrictions on union-security arrangements only where made in excess of the federal limita-

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment below should be affirmed.

ROBERT L. STERN,
Acting Solicitor General.
GEORGE J. BOTT,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
DUANE BEESON,
Attorney,
National Labor Relations Board.

OCTOBER 1953.

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tion. See, H. Rep. 245, 80th Cong., 1st Sess., p. 34; H. Conf. Rep. 510, 80th Cong., 1st Sess., p. 60; 93 Cong. Rec. 6445, 6519–6520.

We do not understand the footnote reference to Section 14 (b) in *Plumbers Union v. Graham*, 345 U. S. 192, 194, n. 1, to suggest a different rule. Nothing in that case indicates that the state court could have enjoined the picketing there involved had it also constituted an unfair labor practice subject to the Board's jurisdiction. No claim was made in that case that the business involved affected interstate commerce so as to subject it to the Board's jurisdiction. Nor was it urged, or, apparently, considered by this Court, that the state action might have infringed the Board's exclusive jurisdiction to deal with unfair labor practices proscribed by the Act in the event that the business involved there was within the coverage of the Federal Act.

APPENDIX

The relevant provisions of the original National Labor Relations Act (49 Stat. 449, 29 U. S. C. Secs. 151, *et seq.*), and of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. V, Secs. 141, *et seq.*), are as follows:

Key to Comparison

Portions of the National Labor Relations Act which have been eliminated by the Labor Management Relations Act are enclosed in black brackets; provisions which have been added to the National Labor Relations Act are in italics; and unchanged portions of the National Labor Relations Act are shown in roman.

National Labor Relations Act

Findings and Policies

Section 1. * * *

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choos-

ing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * * *

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) [There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except] *The National Labor Relations Board (hereinafter called the "Board") created by this Act prior to its amendment by the Labor Management Relations Act, 1947, is hereby continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President, by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years, and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting* that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neg-

lect of duty or malfeasance in office, but for no other cause.

* * * * *

(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

* * * * *

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in [the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder,] any other statute of the United States, shall preclude an employer

from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in *section 8 (a) of* this Act as an unfair labor practice) to require as a condition of employment membership therein *on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later,* (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; *and* (ii) *if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;*

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation

of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor

organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power [shall be exclusive, and] shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, [code,] law, or otherwise: *Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding pro-*

vision of this Act or has received a construction inconsistent therewith.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge.* Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. [In any such proceeding the rules of evidence prevailing in courts

of law or equity shall not be controlling.] *Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723–B, 723–C).*

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon [all] *the preponderance of* the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated*

with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon [all] the *preponderance of* the testimony taken the Board shall not be of the opinion that the [no] person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. *No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.*

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(e) The Board shall have power to petition any circuit court of appeals of the United States (including the *United States* Court of Appeals [of] *for* the District of Columbia), or if all the circuit courts of appeals to which application

may be made are in vacation, any district court of the United States (including the [Supreme] *District* Court of the *United States for the* District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board.

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(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the *United States* Court of Appeals [of] *for* the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. * * *

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(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is

alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

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(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: Provided further, That no temporary restraining order shall be issued without notice

unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: Provided further, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

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LIMITATIONS

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SEC. 14 (b) *Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.*

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